

FILED

FEB 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAUL PARDINAS-FLORES, aka Paul
Pardinas,

Defendant - Appellant.

No. 05-50465

D.C. No. CR-05-00060-DSF

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Paul Pardinas-Flores appeals the sentence imposed following his guilty plea to being an illegal alien found in the United States following deportation in violation of 8 U.S.C. § 1326. Pardinas-Flores asserts that 8 U.S.C. § 1326(b),

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

which permits an enhancement above 8 U.S.C. § 1326(a)'s two-year maximum based on the district judge's finding that a defendant's deportation occurred subsequent to a conviction for an aggravated felony, is unconstitutional. This contention, as Pardinas-Flores concedes, is foreclosed. *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) (holding that § 1326(b) is a sentencing factor to be found by the judge, not proved to a jury); *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that we continue to be bound by the Supreme Court's holding in *Almendarez-Torres*).

AFFIRMED.